

3-19-92
Service Date: March 19, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of The Staff Audit) UTILITY DIVISION
of PacifiCorp, an Oregon)
corporation.) ORDER NO. 5612

PROTECTIVE ORDER

On March 9, 1992 the Montana Public Service Commission ("Commission") received a Motion for Protective Order from PacifiCorp, an Oregon corporation with electric utility operations in Montana regulated by the Commission. The Commission Staff has recently been engaged in conducting an audit of PacifiCorp (or "the Company") and as a part of that audit recently submitted audit requests relating to a project in the Company's Southern Oregon and Northern California service territories. This project involves installation of Fiber Optic Ground Wire ("FOG Wire") to existing PacifiCorp transmission facilities. Participating with the Company in the FOG Wire project is MCI Telecommunication Corporation ("MCI"). Staff recently submitted interrogatories/audit requests to PacifiCorp related to the FOG Wire project that requires submission of, among other things, compensation data, copies of all contracts or other written agreements and a detailed narrative explaining all important aspects of the project. MCI and PacifiCorp deem much of the data sought by

Staff to be trade secrets, commercially sensitive information that should not be disclosed to competitors or the public generally. The Company seeks a standard Protective Order from the Commission to protect all data furnished in the audit if alleged to be a trade secret or otherwise confidential information, subject to the usual right to challenge confidentiality provided in standard Commission Protective Orders (see, e.g., Order No. 5538a, Docket No. 90.11.78).

NOW THEREFORE IT IS ORDERED that PacifiCorp's Motion to Issue Protective Order is granted. The following order governs all data or information submitted in the course of the audit of PacifiCorp claimed to be a trade secret or otherwise confidential and shall be in effect throughout the audit process and thereafter, unless and until the Company has announced that the information need not remain under the cover of this Order or upon successful challenge to its confidentiality.

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged or confidential nature shall be furnished pursuant to the terms of this Order. All persons accorded access pursuant to this Order shall treat the information as consti-

tuting trade secret, confidential or privileged commercial and financial information ("Confidential Information"), and shall neither use nor disclose the Confidential Information other than for the purpose of this proceeding and solely in accordance with this Order. All Confidential Information shall be so marked by PacifiCorp by stamping the same with a designation indicating its trade secret, proprietary or confidential nature and shall be submitted to the Commission on yellow paper for easy identification for filing purposes.

- (b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding. Access to any specific Confidential Information, however, may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Any such expert may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corpo-

ration of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission and any member of its staff, the Consumer Counsel and any member of his staff, and staff members of intervenor State agencies may have access to any Confidential Information made available pursuant to this Order and shall be bound by the terms of this Order.

- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information to any authorized counsel or expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person. Before disclosure, such person and the counsel shall agree in writing to comply with and be bound by this Order. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require the persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain

the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the company and a copy delivered to the Commission.

- (d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and be reviewed by counsel and experts as defined in paragraph 1 herein in a place and a time mutually agreed on by the parties, or as directed by the Public Service Commission.

2. Challenge to Confidentiality.

- (a) This Order establishes a procedure to expedite handling of information claimed to be confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.
- (b) If the parties hereto cannot agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, the objecting party shall submit the objection(s) to the Commission for review pursuant to this Order. When the Commission rules on whether any

documents, data, information, studies or other matters submitted for review and determination are Confidential Information, the Commission will enter an order resolving the issue.

- (c) Any party at any time upon ten (10) days prior notice may move or petition the Commission to remove from protection of this order and/or the sealed record specified documents designated as Confidential Information or otherwise accepted into the sealed record and to place these documents into the public record. A hearing examiner and/or the Commission shall determine a challenge of Confidential Information after proceedings in camera in which only those persons accorded access to the Confidential Information may be present. The record of such in camera hearings shall be marked CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER." It shall be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission. This transcription shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order. Parties may agree to release the transcription from the restrictions of this Order, or after notice and hearing, the Hearing Examiner or the Commission

may issue an order making the transcription public. If the Commission issues an order removing any information from protection under this Order, the affected party may request nondisclosure and/or nonuse in the public record for five (5) business days, to enable the affected party to seek a stay or other relief. The Commission shall grant such a request, and parties shall not publicly disclose or use this information during this time period.

3. (a) Receipt into Evidence. Evidence of Confidential Information in this proceeding shall be received under seal. At least ten (10) days before use of any Confidential Information as evidence, the party intending to use such Information shall notify the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions, if any, of the documents containing Confidential Information to be offered or referenced on the record shall be placed in the sealed record. Only one (1) copy

of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

- (b) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," and due to their trade secret nature, they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.
- (c) In Camera Hearing. Any Confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Information under this Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.
- (d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as

designated herein for the information and use of the Court.

- (e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for PP&L within 30 days after final settlement or conclusion of this matter including administrative or judicial review.

4. Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examination, briefs, argument or motions, it shall be by citation or title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Examiner or the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

- 5. (a) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusionary form and will

avoid reproduction in any decision of Confidential Information to the greatest possible extent. If necessary for a determination in this proceeding to discuss Confidential Information other than in a general or conclusionary form, it shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

- (b) Summary for Record. If deemed necessary by the Commission, PacifiCorp shall prepare a written summary of the Confidential Information referred to in the Decision or Order to be placed on the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a Court having jurisdiction.

All written Confidential Information coming into the possession of the Consumer Counsel under this order may be retained by him in his office files, but shall be withheld from inspection by others, except for his staff and his counsel, unless released by the Public Service Commission and/or a final order of a court under this paragraph 6 and subject always to the terms of paragraph 7 of this Order.

7. Preservation of Confidentiality. All persons entitled to obtain any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than preparation for and conduct of this proceeding, and then solely as provided herein, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal

any such determination of the Commission or such assertion by a party.


9. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions as it deems appropriate, upon motion by an appropriate party and reasonable notice.

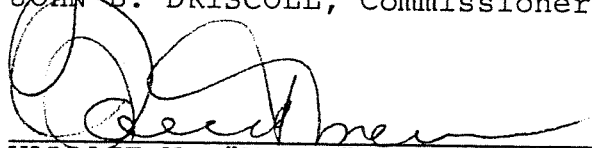
Done and Dated this 10th day of March, 1992 by a vote of
4 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

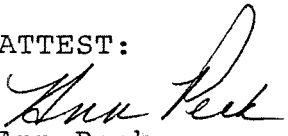

DANNY OBERG, Vice Chairman


BOB ANDERSON, Commissioner


JOHN B. DRISCOLL, Commissioner


WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:


Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the Protective Order No. 5612, dated March 10, 1992, and agree to be bound by the terms and conditions of such order.

Signature

Typed or Printed Name

Residence Address

Employer or Firm

Business Address

Party

Date